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The State of the Union: Toward a Biopolitics of Marriage

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Abstract

Introduction

Marriage constitutes a surprisingly dense site in contemporary cultural logics. The fantasies about romance, commitment and relationships, proliferating across a range of media contexts (see Cadwallader and Heise in this issue), often obscure the way that marriage is used politically to discipline and administrate the population. Indeed, as Baird maps (this volume), the movement for same-sex marriage in Australia has turned from the analysis of marriage as a means for distributing material rights and responsibilities, toward the focus on feelings, commitment and love, perhaps best encapsulated in GetUp!'s video depiction of an unfolding relationship toward its fulfilment in marriage, as discussed by Richardson-Self (this volume). This turn towards the "beauty" of love often situates critiques of marriage as killing others' joy. As Sara Ahmed has pointed out, however, killjoys remain important in challenging injustice, and this editorial seeks to do precisely that.

This editorial, then, seeks to offer a Foucauldian framework for understanding the contemporary significance of marriage, primarily within Australia, but with resonances for other contexts. In it, we explore the way that marriage continues to be used as a means of administering populations, enhancing some forms of life—through easy access to material rights—and denying, obscuring and making so difficult as to destroy other forms of life. The first section lays out Foucault's theory of biopolitics, emphasising the role of marriage within it. The second section seeks to examine particular kinds of life—that is, particular kinds of people—which are denied access to marriage, drawing out the significance of this denial for the possibilities of ordinary life. The third section builds on this, demonstrating that a wide variety of relationship forms that people currently live in, and which are key for sustaining the life of individuals, relationships, communities and even the state, are also routinely denied access to the material goods which are strictly limited to marriage. In this way, we seek to demonstrate not only that marriage is used as a key means of inequitably distributing material rights, but that it plays a role in carving away those forms of life that the state deems to be extraneous, problematic, morbid, deathly.

Marital Life: Biopower's Stake in Marriage

Foucault (*Society*) sought to demonstrate the political shifts that occurred around the early 1800s which asserted power over life itself. Biopower—the power over life—was enabled through two intertwined functions. The first, which he called biopolitical, focused on the administration of the life of the population, seeking to strengthen and enhance it through techniques as wide-ranging as labour laws, public hygiene, and the regulation of heredity. The second, called anatomopolitical, focused on the disciplining of individuals, primarily through knowledges and institutions from medicine and psychiatry to principles of taxation. This discipline was peculiarly effective partly because it deployed the notion of power as oppressing natural desires to produce those desires as the individual's own, and liberation as the expression of those desires (*Society* 249-256).

As Foucault argued, circulating between these two intertwined elements of biopower was "the norm," and a proliferation of knowledges and institutions engaging with questions of health and pathology, sexuality and race, and bodies and disability. This enabled what Foucault calls a "caesura" or "fragmentation" of the population into two, in the name of enhancing life. On the one hand was life, the "superrace" (*Society* 61), those whose lives and well-being must be prioritised and nurtured. On the other hand were the "subrace," (*Society* 61), those associated with death, who, according to Foucault, could be subject to "not... simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on" (*Society* 256). This fragmentation of the population, then, which Foucault names racism (in a slightly misleading way, since he is talking about the structural fragmentation of a population in the way described above, which includes racism but also goes beyond it) enables the creation of techniques of biopower designed to enhance and support life as a general principle, rather than simply at an individual level.

Although this logic and language is most familiar from Nazism, Foucault argues that the fragmentation of the population enabled and informed a vast array of technologies for managing life which continue in a variety of contexts by sustaining some lives through the granting of rights and benefits, and undermining other lives through denying those rights and benefits. One of these technologies is marriage. Married couples—and sometimes those in marriage-like same-sex relationships (such as in Australia, see Attorney-General's Department)—can access the following benefits (depending on country): tax breaks, shared and thus cheaper living costs, cheaper insurance, cheaper or any access to health cover, recognition as "next-of-kin," simplified immigration processes, cheaper inheritance, protection from investigation in criminal proceedings, enhanced social security, compensation in the case of the wrongful death of a partner and automatic or highly simplified recognition of parent-child relationships. Importantly, these are not benefits arising from the needs of married couples per se (ie they do not compensate for some form of pre-existing disadvantage). Rather, they are rights which smooth the way for those participating in easily-manageable coupledness, and discriminate against those who cannot or will not adhere to its requirements. It is used to administer populations through delimiting personal relationships between people, managing the distribution of social goods, the continuation of the population, and the disciplining of individuals through the creation of normative familial life. In this sense, marriage rights are designed for reproduction in two senses: in the sense of offspring, and in the continuing of normative and normalised individual ways of life, as Rose clearly argues:

The government of freedom, here, may be analysed in terms of the deployment of technologies of *responsibilization*. The home was to be transformed into a purified, cleansed, moralized domestic space. It was to undertake the moral training of its children. It was to domesticate and familiarize the dangerous passions of adults, tearing them away from public vice, the gin palace and the gambling hall, imposing a duty of responsibility to each other, to home, and to children, and a wish to better their own condition. The family, from then on, has a key role in strategies for government through freedom. It links public objectives for the good health and good order of the social body with the desire of individuals for personal health and well-being. A 'private' ethic of good health and morality can thus be articulated on to a 'public' ethic of social order and public hygiene, yet without destroying the autonomy of the family—indeed, by promising to enhance it (75).

The biopolitical management of life, then, had and still has, a peculiar stake in the institution of marriage. This is partly about reproduction, as Rose demonstrates above, but this is not merely about the reproduction of biological offspring through managing who can bear children and where and when. It is also bound to the reproduction of styles of life and culture (see Costa, this volume).

In this context, the choice to get married, or even to simply be in a socially approved dyad (depending on the situation), cannot be disjoined from this biopolitical administration. Understanding these privileges as supporting, sustaining and approving only of very select forms of relationship does two things: first, it helps to ground a politics concerned with how these inequalities are sustained, and second, it makes clear what is frequently concealed by the romantic feeling, the fun, the fantasy, the drama and the consumerism—all coded as profoundly individual, and as manifesting the uniqueness of the individual couple—which remain so key to the representations of marriage.

As queer critique has shown for a long time, there are far more forms of kinship beyond the legally recognised and socially approved dyad, forms that proliferate both within and outside queer contexts, and these remain unrecognised (Butler; Warner; Foucault *Friendship*; Beyond Marriage Working Group). It is not simply that these are being jettisoned from the queer imaginary as it is taken over by the nice, clean-cut boys-next-door who help make same-sex marriage palatable (GetUp!; Sams), but that as a result of this abandonment, same-sex marriage has come to be constituted as the 'last frontier' to be overcome by queer communities. As a result, the material consequences of exclusion from marriage for the immense variety of queer (and not only queer!) relationships are obscured.

Perhaps unsurprisingly, those who are precluded from the apparent happiness of marriage (Ahmed 204) because of who they are, or their styles of relating, are usually situated discursively as responsible for their own unhappiness. As Pendleton and Serisier demonstrate in their paper, a key example is the "immiserated queer," whose rejection of discipline and a normative way of life in their "promiscuous under-world" apparently leads inevitably to unhappiness. As Lauren Berlant puts it,

People are schooled to recognize as worthwhile only those desires that take shape within the institutions and narratives that bolster convention and traditions of propriety. They learn, further, to be afraid of the consequences when their desire attaches to too many objects or to objects deemed "bad": whether they find themselves

longing for persons of an illegitimate or merely inconvenient-to-comfort sexuality, race, class, ethnicity, or religion, or marital status (44).

This "schooling" is anatamopolitical disciplining, and it encourages individuals to invest in the biopolitical institution of marriage. In this way, the turn towards marriage itself in contemporary same-sex marriage movements, rather than sustaining the critique of the asymmetrical way that biopower sustains some lives and not others, cannot be understood as neutral.

Identifying Right

As Foucault argues, "racism" is the "biological-type caesura... [that] will allow power to treat that population as a mixture of races, or to be more accurate, to treat the species, to subdivide the species it controls, into the subspecies known, precisely, as races" (*Society* 255). What he means by this is because life is identified here as biological, the fragmentation of the population into the subracial and the superracial is usually identified as arising from natural biological difference, one in which the death of the subracial *strengthens* biological life overall:

Racism makes it possible to establish a relationship between my life and the death of the other that is not a military or warlike relationship of confrontation, but a biological-type relationship: 'The more inferior species died out, the more abnormal individuals are eliminated, the fewer degenerates there will be in the species as a whole, and the more I—as species rather than individual—can live, the stronger I will be, the more vigorous I will be. I will be able to proliferate.' The fact that the other dies does not mean simply that I live in the sense that his death guarantees my safety; the death of the other, the death of the bad race, of the inferior race (or the degenerate, or the abnormal) is something that will make life in general healthier; healthier and purer.' (*Society* 255)

This means that the caesura that identifies those people who should be excluded, for example from accessing marriage, appears (through authorised forms of knowledge like science, and psychiatry and psychology) to fall along the lines of natural differences used to recognise particular identities. The history of knowledge about homosexuality, and the continuing though discredited attempts to find "gay genes" or "gay brains," reveal that the exclusion of gay and lesbian people from marriage has been parsed through the naturalisation of the superiority of heterosexuality and the deeming of homosexuality as a biological, if "unnatural," difference. Other differences parsed in this way are, as will be demonstrated in this section, function to preclude racialised others, and people described as trans*, disabled, asexual and intersexed.

In many ways, our contemporary negotiations with race and marriage are leftovers from colonialism. In colonial contexts, as Ann Laura Stoler articulates, the regulation of sexual and domestic relationships, especially through the granting and withholding of marriage, enabled racial hierarchies to be produced and sustained. Ensuring the maintenance of the "home traditions" of the colonisers through only permitting certain groups of people access to marriage, usually on the basis of familial heritage, provided techniques for managing a resistant colonised population. This history continues in contemporary Australian neocolonialism. Aboriginal forms of union, which differ from marriage and can involve more than two partners, have been and in many cases continue to be, precluded from recognition and access to social goods like social security (Australian Law Reform Commission).

Immigration is one of the most explicit sites of the exclusion of certain people from the population. Even partnership visas require the announcement of "Arab background," and the evidencing of "exclusivity" in relationships. The reaction against polygamy in Australia is thoroughly shaped by racialised discourse, often Islamophobic, and invisibilising Aboriginal kinship arrangements:

Everyone should be on notice that the law in Australia is that marriage is between a man and a woman to the exclusion of all others... It's based on the culture of our community and polygamous relationships are entirely inconsistent with that culture and indeed with the law. (Robert McClelland, cited in "Minister Warns Muslim Polygamists")

Indeed, the anxiety about the Muslim population in Australia is expressed in a range of other ways, but predominantly in relation to marriage and reproduction, demonstrating the role of marriage in the racist regulation of the population. The claim that there is a population crisis created by aging Baby Boomers rarely if ever makes reference to the frequently very low numbers of refugees accepted into Australia (United Nations High Commission for Refugees). The coexistence in Australian politics, and in the person of marriage advocate, MP Kevin Andrews, of calls for an increase in reproduction (Andrews) alongside anxieties about the growth in the Muslim population in Australia ("Growth of Muslim Population a Problem: MP."), demonstrates the xenophobia and racism often obscured by the use of marriage in regulating who is part of the population.

Yet those recognised explicitly as of another race are not the only ones whose place in the population is carefully delimited by this racialised "fragmentation" of the population. Other forms of naturalised difference are regulated in this way. People with disabilities have their participation in relationships, sex, marriage and reproduction limited in a variety of ways. Women with disabilities, especially intellectual disabilities, are frequently subject to sterilisation (Women with Disabilities Australia). Many people are disabled in accessing contraceptives, sex, and even marriage, demonstrating that full rights rely on able-bodiedness (McRuer; Wilkerson; Shakespeare; Finger). This is also reflected in the continued exclusion of people with disabilities from migration to Australia, even in the context of marriage, enabled by the exclusion of immigration laws from the Disability Discrimination Act (Panichi).

Intersexed people diagnosed with a "disorder of sexual development," often struggle for recognition within the limited terms of "one man and one woman" permitted to marry (Organisation Intersex International Australia *Annulment*). This is a problem that would not go away with many of the proposed amendments to the marriage act in the name of "marriage equality" (Organisation Intersex International Australia *Senate*). The introduction of new passport requirements may also create difficulties for intersex people who change their legal designation to "X," given that this may make it impossible for them to be considered either a "man" or "woman" for purposes of accessing marriage.

Trans* people have also been excluded from the institution of marriage, in different ways at different times. Historically, heterosexual trans* folk faced invasive legal questioning in court. Amongst other private matters, how "successful" genital modification surgeries were, through a comparison with cissexual genitals, was considered a legitimate question for the law, demonstrating that the capacity to have heterosexual sex (understood as penis-in-vagina) was an implicit requirement of marriage (Sharpe 92). For some trans* folk, a choice must be made between accessing marriage and altering their legal sex, meaning that some aspect of their lives remains unrecognised. For others, the capacity to access marriage is dependent upon alteration of legal sex, which in many states requires sterilisation (ABC), once again demonstrating the biopolitical assignment of "subracial" status to trans* people. Passport policies were changed recently to make alteration of legal sex easier for trans* people, but this is limited to those who can provide a letter from a doctor "certifying that you have had, or are receiving, appropriate clinical treatment for gender transition to a new gender" (Department of Foreign Affairs and Trade). For those trans* folks who do not adhere either to the medical narrative of transgender transition (from one sex to another), or whose identity is not simply "male" or "female," these laws remain exclusionary (Spade).

Asexuality as an identity category helps to elucidate some of what might be at stake in the insistence not only that marriage be about heterosexual reproduction, but about sexual relationships at all. Asexual people self-define in a range of ways, but most common is the thread that they are not sexually attracted to people, though they may be drawn to them in other ways. This challenges to common sense about how people and relationships work also demonstrate that the requirement that one be in a sexual, romantic relationship in order to access the benefits attached to marriage may be impossible or even violating for some people. It draws attention to the affective and sexual expectations that marriage as a category, and the hierarchy of relationships it grounds, and the role that these play in maintaining biopolitical norms (Scherrer).

Relating Right

As the example of asexuality makes particularly clear, the exclusions of certain people from accessing the institution of marriage can occur also through the exclusions of particular ways of relating: identities and forms of relating intersect in significant ways, especially according to the knowledge of biopower. These various forms of relating can be difficult to recognise because they are rarely narrated or legitimated, as Berlant describes above. We would like to explore a range of them to demonstrate the variety of relationships and non-relationships which are deemed to lie outside the realm of the privilege form of union. There are, of course, more ways of relating which are not named here, particularly those associated with non-Western cultures. While our description, then, seeks to undo some of the invisibilising influence of the contemporary public imaginary of marriage, it also replicates it in some ways.

Various forms of non-monogamy have proliferated in the West, especially, or perhaps simply more explicitly, over the past 50 or so years. Infidelity is a very common contemporary practice, though accurate statistics are obviously difficult to access. Alterations to the Family Law Act now allow the recognition of both

formalised marriages and *de facto* relationships, especially during break-ups (Hewitt). This means that the party outside the legitimated marriage (the “other woman,” as the figure is heteronormatively known) and their children are protected in the event of a break-up. This brings an even more interesting dynamic to the biopolitical administration of relationships, because it favours deceit and the betrayal of the official requirements of marriage over negotiated, agreed and more-or-less formalised non-monogamous relationships.

The variety of non-monogamous relationships is expansive (Haritaworn, Lin, and Klesse; Klesse; Albury; Heckert; Barker and Langdridge; Barker). Some fall into the following established categories: There are open relationships where one or both “primary” partners might, depending on arrangements, have romantic dates, make-out sessions, sex and/or on-going relationships with others, sometimes identified as “secondary.” There are polyamorous (many-loving) singles, couples, triads, quads and tribes, where different kinds of significant relationships, including but not only sexual, co-exist. These arrangements can extend to polyfidelitous tribes, where a number of people commit to only having sex within the tribe as a way of enhancing community and safer sex.

The non-monogamous relationships described so far issue from a predominantly (though very far from solely) white, Western, middle-class community, often with libertarian, queer and/or anarchist commitments, as Rambukkana observes. These communities rarely connect with or explicitly discuss those forms of non-monogamy which are associated with religious or cultural groups, such as polygamy in some Aboriginal Australian communities, amongst Mormon sects and in some Islamic communities, sometimes because of concerns about sexism, misplaced or otherwise, and sometimes because of an inability to negotiate with their own implicit racism and privilege.

People in the relationships described above often appear in institutional terms to either be couples (sometimes married) or single, for two main reasons: first, because other forms of relationship are not recognised, for example, on forms that ask about marital or relationship status; and second, because there are numerous risks associated with coming out as involved in non-monogamous practices including, in some places, possible but uncertain risks to child custody, immigration rights, or housing (Easton and Hardy 43). In this way, the expectation of dyadic relationship formations means that poly and other non-monogamous folk—their numbers, their position in the community, their role in sustaining community or each other—are obscured, and difficult to access. This also makes it difficult to counter the narrative that situates monogamous relationships as the site of happiness.

The lack of institutional recognition of those involved in these varying forms of relationships in many ways is what enables them to happen at all, since the conditions placed on that recognition may be terms those involved are not willing to accept, or even to pretend to accept in order to access material benefits—for example, by promising to “exclude all others” from the relationship, or to be together “until death do us part.” (See Fordham, this volume, for a further discussion of the contemporary content of marriage vows). But it also means that many of the material benefits of dyad unions must be given up or unfairly divided amongst partners, and there is little protection offered those involved in these relationships, especially if or when they break down. The biopolitical exclusion of these particular kinds of non-monogamous relationships (unlike the marriage + the other woman cheating model) from these regulatory benefits demonstrates the state’s commitment to very limited notions of union.

Intimate friendships, including cohabiting, is often associated with youth, especially university students. Yet as the population ages in Australia, older people are turning toward living together, and supporting each other. Often described with reference to *Golden Girls*—a TV series from the 80s and 90s, in which four elderly women co-habit—these relationships may often be platonic, and can also be the most significant relationship in a person’s life. The capacity for such elderly close friends to be able to share, for example, health insurance, would help to protect them against the losses they face with the death of spouses (which, given the benefits of marriage, extend far beyond bereavement and into heavily practical, material matters).

There has been increasing consideration of the possibilities of remaining single throughout one’s whole life, sometimes associated with the increased demands in neoliberalism that workers be flexible about their location, and sometimes with an array of other freedoms (Klinenberg). Bella DePaulo has written about the unique challenges faced by single people, including the financial difficulties of remaining single for one’s whole life, and the social stigma regularly attached to singledom. Singles are excluded from numerous material benefits associated with marriages: insurance, for example, is often more expensive for single people, while the savings associated with couples and families are passed on to consumers.

Conclusion

The account of marriage provided here has sought to put the frequent appeals to emotion, romance and the prettiness (or otherwise!) of weddings to one side, to examine the role that marriage plays in the contemporary State. It is a technology of biopower that enables the discriminatory distribution of rights and benefits in ways that sustain only particular kinds of people in particular kinds of relationships, those which function to reproduce a stable population and thus a stable, unified, normalised State. The extraordinary investment in marriage, then, as displayed across various forms of media, and in the “Marriage Equality” movement in Australia, helps to maintain the idea that this institution is primarily about love and romance, and not about the racist fragmentation of the population, and the denial of basic life-supporting rights and benefits to those who do not adhere to a variety of norms.

But the variety and number of people, identities, races and relationship styles who are excluded from the benefits attached to marriage, whether through an inability or a lack of desire to marry, also demonstrates the politics of the Australian Marriage Equality movement, for all of its claims to be “working for equal rights for all Australians.” The claim that “marriage is about love and commitment, not about your partner’s gender,” becomes, in this context, a fantasy, one which feeds into the anatopolitical disciplining of desire, and covers over the biopolitical use of marriage to discriminate against some people, and against some ways of relating. As this editorial demonstrates, and the rest of this issue will go on to explore, love and care and intimacy (see Potts, this volume), which sustain so many lives, including those the state neglects, are not the sole purview of married couples, despite the frequent claims that they are. Thus, giving only some access to the benefits and rights associated with marriage remains a way of supporting some lives, and denying others the rights and benefits that will make their lives liveable. The appearance of marriage as a source and site of love and care and intimacy ought not to obscure the ways that it is used to deny support to particular ways of being in the world with others.

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